PROBATION AND SUSPENDED SENTENCE[1]

(REPORT OF COMMITTEE "B" OF THE INSTITUTE)

EDITH ABBOTT, Chairman

Instead of a report covering recent legislative enactments relating to probation, it has seemed worth while to submit to the members of the Institute some recent data relating (1) to the operation of certain adult probation legislation already on the statute books, and (2) to the need of extending such legislation.

(1) As to the first point, it may be said that in our zeal for gathering in the sheaves of social legislation we sometimes forget to see how valuable the harvest really is. This has certainly been true in the adult probation field. For example, some recent reports have been published which make possible a view of the adult probation law of Illinois as it actually operates. The adult probation law ot Illinois went into effect July 1, 1911. But the last report of the Executive Secretary of the Illinois Department of Public Welfare shows that in nearly half the counties of the state this law has never been used at all during the intervening eight years. The only reason assigned is "a lack of interest on the part of the officials." That is, the local judges of Illinois during this period have not had enough interest in this great ameliorative statute to make any attempt to use it. In other counties where the statute is nominally in use, probation is not an extensive substitute for the old sanctions of the law. Thus the Secretary reports that approximately one-half of the counties that do employ probation officers pay only from $50 to $300 a year as salaries or per diem allowances in lieu of salaries. The extent and character of probation services secured for these salaries need not be described.

In other counties where the law is supposedly used, it is really misused by judges who apparently take the position that they do not

[1]Presented at the Eleventh Annual Meeting of the American Institute of Criminal Law and Criminology, Boston, Mass., Sept. 2-3, 1919. See also the Journal of the Institute for November, 1919.

The personnel of the committee is as follows: Edith Abbott of the University of Chicago and the Chicago School of Civics and Philanthropy, Chairman; the Hon. A. C. Backus, Milwaukee; Minnie F. Low, Chicago; Homer Folks, Yonkers, N. Y.; Joel D. Hunter, Chicago; the Hon. Maclay Hoyne, Chicago; John L. Whitman, Springfield, Ill.

need to obey the laws themselves. The case of Chicago is especially interesting. The chief adult probation officer for Chicago in his Fourth Annual Report reported that upon his recommendation the legislature of 1915 had so amended the adult probation law that it provided that "no PERSON should be admitted to probation until an investigation had been made by a probation officer 'to ascertain the residence of the defendant, his occupation and whether or not he has been previously convicted of a crime or misdemeanor or previously been placed on probation by any court.'" According to the statute the report of this investigation must be in writing and filed with the clerk in the case. However, this mandatory provision with regard to a preliminary investigation failed to alter the practice of the judges of Chicago. In his next (Fifth) Annual Report the chief probation officer again is obliged to call attention to the evils resulting from a failure to require a preliminary investigation. He again calls attention to the necessity of issuing warrants for probationers who could not be found because they gave false addresses. "This shows," he says, "the utter futility of admitting defendants to probation without an investigation." An investigation would show where they "reside and whether they were the kind of persons who would be bettered by supervision."[2]

In the next (Sixth) Annual Report, 1916-17, the chief probation officer presents a study of 2,730 probation cases discharged from courts which were required under the law to make an investigation before placing these persons on probation.[3] In only 934 of these cases had an investigation been made as required by law, and in 1,796 cases the judges had violated the law by admitting defendants to probation without a preliminary investigation. Out of 429 cases on probation from the Criminal Court, no investigation had been made in 294 cases; and out of 2,176 cases on probation from the Municipal Court, no investigation had been made in 1,440 cases. That is, in about two-thirds of the cases of persons placed on probation in Chicago the success of the system is jeopardized because the judges themselves refuse to obey the law. It is not necessary in a report to this Institute to discuss the importance of the provision of the statute which Chicago judges are continuing to ignore.

Another reform that has been practically nullified by Chicago judges is the provision with regard to instalment fines. The Merriam Crime Commission of 1914 had called attention to the fact that the

[2]Fifth Annual Report of the Adult Probation Department of Cook County, Illinois, for 1915-1916, p. 8.

[3]Investigation is not required for cases from the Court of Domestic Relations, but no cases from that court are included in this study.

Chicago House of Correction was being supported at great expense to the taxpayers largely to take care of men who were too poor to pay the small fines assessed against them. The Commission showed that in the current year 82 per cent of the fourteen thousand prisoners in the House of Correction were there solely for the non-payment of fines and the Commission recommended as a measure that would be both economical to the taxpayer and more beneficial from the reformatory point of view to the prisoner, the use of the instalment fine system. The passage of the instalment fine amendment to the probation law in 1915 (made upon the recommendation of the chief adult probation officer for Chicago as well as the Chicago Crime Commisson) has, however, made little if any change in the practice of the Chicago judges. A report recently published by the House of Correction showed that in 1916, 10,275 men and women (80 per cent of the whole number committed to the House of Correction) were committed for the non-payment of fines and in 1917, 12,103 men and women were committed for the non-payment of fines.

Getting an adult probation law through the legislature is apparently much easier than persuading county supervisors to provide money for salaries for probation officers or educating judges to make use of the privilege of releasing defendants on probation or when they do use the privilege, to follow the mandates of the law as to the conditions of probationary release. It cannot be too strongly emphasized that a duty lies upon this and similar organizations of carrying on educational work with regard to the importance of adult probation long after probation laws have been placed on the statute books. There is reason to believe that the experience of Illinois is in no way exceptional. Large numbers of judges apparently take a merely perfunctory interest in their work and will have to be systematically encouraged to make use of such reforms as are embodied in adult probation laws.

(2) Passing on to another aspect of this subject, certain recent evidence is available as to the need and practicability of extending the probation system and of making the use of probation in certain types of cases mandatory upon the courts instead of optional with them.

The recently published United States Census Report on Prisoners and Juvenile Delinquents[4] contains important data with regard to the need for adult probation in the United States. This report shows

[4]This report, issued late in 1918, unfortunately, covers the year 1910, but although so long delayed in publication, the data are still of great value. The report is especially important since no count has ever been made before of the total number of persons imprisoned in the United States for non-payment of fines during a year.

that thousands of persons each year experience the demoralization of a short sentence in one of our minor prisons and that nearly three hundred thousand persons are committed annually for the non-payment of fines.

This Census Report presents, for the first time in this country, statistics showing the total number of persons imprisoned in a given year for the non-payment of fines. The report shows that 58 per cent of all the persons committed to prison in our country are committed not for their crimes, but for their poverty, because they were too poor to pay the fines imposed by our courts. The extent of this modern system of imprisonment for debt is shown by the following figures: In a single year, 291,213 poor persons were imprisoned for non-payment of fines, and among them were more than 6,000 children of juvenile court age (seventeen or under). For inability to pay fines of less than $5, 35,363 persons were imprisoned, and 129,713 for fines of less than $10.

Imprisonment for non-payment varies in different sections of the country and is, of course, more common in the south than in the north. Seventy per cent of all prisoners in the South Atlantic States are committed only for inability to pay fines, and the percentage falls to 48 per cent in the Middle Atlantic States and to 41 per cent in New England.

To members of this Institute, to those who know the noisome, verminous, dark, ill-ventilated local prisons to which these persons are sent to spend their time in idleness and demoralizing companionship, the cruelty and waste of such punishment is obvious.

These facts as to the extent of imprisonment for the non-payment of fines should be the more carefully considered in our country in view of the fact that the whole evil system has been practically swept away in Great Britain by the successful operation of the Criminal Justice Administration Act of 1914. In democratic America it appears that in the second largest city in the country the judges are still sending annually to the city workhouse from ten to twelve thousand persons who are too poor to pay their fines, and in the country as a whole more than 290,000 persons suffer this imprisonment for poverty in a single year; while Great Britain has adopted the more efficient and humane policy of doing away with the last surviving remnant of the mediaeval system of imprisonment for debt. Since 1905, it had been optional with the British courts to give a man time to pay his fine, but in 1914 it ceased to be optional and became mandatory. The first section of the Criminal Justice Administration Act of 1914 provides that in all

cases time must be given for the payment of fines and the time must not be less than seven clear days. At the end of this time further time may be allowed by the court and payment in instalments may be allowed. The Act contains the further humane provision that in imposing a fine the court is to take into consideration "the means of the offender so far as they appear or are known to the court." This provison puts an end to what the Prison Commissioners for Scotland called the "abuse which . . . arises from the imposition for certain offenses of fines upon a stereotyped scale, which necessarily press much more hardly upon the very poor than upon those who are better off." Reports of the three Prison Commissions of England, Scotland, and Ireland all testify to the beneficial results of the Act of 1914 in operation. The experiment appears to have been entirely successful during the five years that have elapsed since the Act became effective.

A twin evil that has recently been abolished in Great Britain is the short sentence. The Crimnal Justice Administration Act of 1914 contains two provisions designed to do away with short and useless sentences of imprisonment: (1) The courts are given power to substitute for a sentence of imprisonment, an order that the offender be detained for one day within the precincts of the court. (2) If a sentence of imprisonment does not exceed four days, the offender is not to be sent to jail, but is to be detained in a "suitable place" certified as such by the Home Secretary. The Commissioners of Prisons for England and Wales emphasize in their 1915 report the importance of the Act of 1914 in preventing the development of a criminal class. As to the short sentence they say that it has not a "single redeeming feature." "It carries with it all the social stigma and industrial penalties of imprisonment with no commensurate gain to the offender or the community. If there still survives in the minds of administrators of justice the obsolete and exploded theory that prison is essentially a place for punishment—and for punishment alone—for the expiation of offenses in dehumanizing, senseless tasks, and arbitrary discipline, truly there could be devised no more diabolical form of punishment than the short sentence oft repeated."[5]

In America the short sentence, like imprisonment for fines, is still with us. The recently published Census Report shows that 24,970 persons were given sentences of less than ten days in our county jails alone. In the municipal jails, it appears that 4,513 persons were sentenced to terms of imprisonment of four days or less than four

[5]Report of the Prison Commissioners (Cd. 7837), p. 18.

days. It may be asked what the Committee on Probation has to do with the problem of the short sentence or with imprisonment for the non-payment of fines. The answer is, of course, everything, for probation is the accepted American substitute for these evils.

In conclusion, this Committee would remind the American Institute that it was a group of English lawyers, Sir William Blackstone, Jeremy Bentham, Sir Samuel Romilly, and Sir James Mackintosh, who took the lead at the close of the 18th and during the early part of the 19th centuries in making the criminal law of England both more humane and more efficient as a means of preventing crime. Social reformers of today have a right to look to an association composed largely of American lawyers to see that the theory and practice alike of our criminal law be made to conform to our modern ideas of social justice. The Criminal Justice Administration Act of 1914 has made the criminal law of England more humane and more democratic than ours. We cannot afford to lag too far behind our English cousins in this field.

DISCUSSION

DR. KATHARINE BEMENT DAVIS (Bureau of Social Hygiene, New York City): Those of us who are familiar with the workings of law in large cities know that a very high percentage of commitments to state penal institutions are commitments for short terms. In New York we had more than 25,000 commitments to the Work House for a term of ten days and less. We have persons in those institutions who have been committed 200 times to the Work House in New York City, and many people have been committed 20 and 30 times. Many of these people would not be successful on probation because they are confirmed drunkards. We hope that has been done away with now by prohibition. But even more serious is the practice in many cities of fining or the giving of a few days' sentence, to women convicted of prostitution or soliciting. It amounts to licensing the woman engaged in street walking because when she is brought into court and fined she simply goes out and earns more money and considers her fine part of the expense of the business. In New York City, not as a matter of law, but as a matter of the judgment of our chief magistrate, we have done away in our courts with the fining of prostitutes, but we still give the short sentence. I should be very glad to see this Institute recommend that a law be passed in the individual states or in our large cities forbidding the imposition of fines upon women convicted of soliciting, loitering and so on, and I should like to add that I think the short sentence is a perfect abomination, and I think they should be sentenced to a proper institution for a time long enough for it to have some effect on them.

THE CHAIRMAN: The suggestion of Miss Abbott is that there ought to be a provision for probation before trial. It would incur the expense of additional probation officers, but if the offense for which they are charged is a probational offense, why shouldn't it begin at the time the apprehension is made? If there is to be probation why shouldn't it come at once and save the incarceration in jail of 6,000 men six weeks, because they would either have been found not guilty or they had been admitted to probation? I really believe if this Institute can work up in its committee some plan to be submitted to the legislature whereby it can be put into a law I think there will be some results shown within a year or two. The legislators are willing to accept advice. All along the line I think an advance is being made. The question only remains, Is the Institute ready to suggest the legislation which appears to be practical and should be enforced? I think this organization should have a Committee on Probation which would submit some form of probation not only to give probation after sentence, but even such as will begin with the apprehension of the offender.

LADY'S VOICE: Can't a person be paroled on probation on his own recognizance?

THE CHAIRMAN: In very few instances is probation permitted by a bond other than the individual to be released. But the same bond can be given beforehand just as well as after. There isn't any reason, after investigation, why the release can't come at once. It would require a larger

probation force, a larger expenditure of money, but what is the expenditure of money compared to the good that may be accomplished.

LADY'S VOICE: Does that imply the violation of constitutional right?

THE CHAIRMAN: It isn't in the nature of a sentence, but it is a release on his own recognizance under supervision.

LADY'S VOICE: Then what would happen if they didn't appear for trial.

THE CHAIRMAN: You usually find that those persons who are charged with those crimes are so situated, economically, that they cannot get away from the jurisdiction of the court. Of course, where there is an element of maliciousness, that must be considered, and I say therefore it would be necessary to have an intelligent discussion by the committee to see whether or not a plan could be worked out because it would be a great deal to the benefit, economically, of the families of people charged with crime.

MR. ALLISON G. CATHERON (Chief Probation Officer of the Superior Criminal Court in Suffolk County): On the question of probation just under discussion, I wish to say that it is not unusual for the probation officers in our court to call to the attention of the court or the district attorney the fact that there are individuals under arrest who are unable to give bail and who, because of being juveniles, or frequently because of their being the support of a family, should be released and not kept in jail awaiting trial. In such cases these individuals are brought before the court, and instead of giving the ordinary surety, the probation officer becomes surety for their appearance, and enters a recognizance for their appearance before the court, at which time the case is continued. During that period the individual is under the supervision of the probation officer, so that this very situation is met frequently and with very desirable results, particularly in non-support cases.

MR. CHUTE (Secretary of the National Probation Association and also of the Probation Commission of New York): I want to say a word, to get back to the report. I agree with the chairman's suggestion very heartily as to using the probation officer to supervise cases released before trial. But getting back to the report of Miss Abbott, I think there is such general agreement among us that there isn't very much to discuss. I do think, however, from her experience in Chicago, that she has been a little hard on the judges; that they have been rather hard hit in the first part of this report as to their willingness to comply with the law in the use of this probation system. Our experience in New York City led me to believe that the judges are more in favor of the probation system than judges in many other communities, because they are face to face with the problem of handling a great many cases they know should not be sent to the institutions. However, I think that the fact, as stated in this report, that about half of the judges of Illinois are using the probation system, since the law went into effect eight years ago, is very encouraging, because the establishment of probation in the courts is something that has to be gradually brought about. The mere fact of passing a law permitting judges to use probation doesn't mean that the next day judges will have probation officers and will be using it.

You have to have the financial support. There is such a difference

between a court not equipped with trained investigators and probation officers, and the modern court equipped with an adequate number of probation officers, that you cannot expect to bring this about immediately. You have got to educate the community to providing and paying for these facilities and if they have got half the judges in Illinois to adopt this system in eight years without any state supervision or encouragement, to promote it, they have done very well. I do believe, and I think most people in New York and Boston will concur, that they should have in Illinois a state supervision of this system and capable persons to promote and improve it, and then a better showing would be brought about in Illinois as has occurred in so many other states. Our commission in New York has done a great deal of missionary work among people to get them to pay for the probation system and that must be done in order to get the system utilized.

JUSTICE SCOTT: Not to defend the judges of Illinois, especially of Chicago, because I have not been on the bench many years, but this last speaker has shown why this system has not been enforced in many counties in the state. I have talked personally with the probation officers and I haven't any doubt that the judges are violating the law, they are simply a fair representation of the sentiments of that community and are no worse than other communities. A judge of the court in Chicago talked with me recently and said he refused to put a man on probation because some of the leaders of his party wanted him to do it. His party, by the way, fortunately didn't succeed in defeating him because he was re-elected. That shows what political influence may do. Here again I think this report will be helpful in aiding us all in determining just what is right to do. Public sentiment and public opinion is most important. This society should be active in preparing public sentiment and public opinion on this question. A law, unless you have public sentiment back of it, is worthless.

THE CHAIRMAN: The criticism of Miss Abbott is not so much upon giving probation as upon giving it without investigation. You have this situation at times. The probation officer is in court; you have people in court who know the accused; neighbors, school teachers, the persons who employ them; and the court, sometimes without waiting for the formality of a report from the probation officers, sees the situation right off.

VOICE: In Chicago isn't it a fact that one reason why you don't make investigations of all these cases is that there are not nearly enough probation officers?

THE CHAIRMAN: Yes, it is very difficult. Sometimes in order to get a case reported we have to wait a week or two and the person has to stay in jail, because we have no probation officer available.

MAJOR PULLMAN (Superintendent of Police of Washington): I should like to say a word on this question from the standpoint of the police. Much criticism of probation is caused, I think, because there is not enough co-operation between the probation officers and the police department of the various cities, particularly of the large cities. I am one of the police heads who are in favor of the probation system; it may be abused, but it is a splendid system. There are times when only one police officer is consulted on probation. That is a great mistake, for you may get a man

among the police officers who may be a recruit and he may give some information on that man to keep the probation officers from making a mistake. The criticism of the probation officers could be avoided by the probation officers sending in a bulletin to the police, and the same information should come from the police to the probation officer. That would make better co-operation between the police and the probation officers, and the amount of criticism now coming from the police officers would be lessened.

MRS. JULIUS ANDREWS of Boston moved that a committee be appointed to bring in a resolution on the subject of probation for action by the Institute. The motion was adopted and the following committee was appointed: Mrs. Julius Andrews, Dr. Katharine Bement Davis, Mr. Mansfield, Mr. E. C. R. Bagley and Mr. Chute.

Later in the course of the conference this committee reported the following resolutions, which were adopted:

Resolved, That the American Institute of Criminal Law and Criminology endorses and urges the adoption in all states which are now without probation laws, or in which the application of probation is limited to minors or lesser offenders, the adoption of adequate probation laws. Such laws should permit judges to exercise wide discretion in releasing offenders on probation and should provide for salaried probation officers in all courts; be it also

Resolved, That we urge all judges, or the authorized officials, to provide a sufficient number of probation officers in all districts, so that the probation system may be used to the fullest extent compatible with the protection of society and the reformation and rehabilitation of the offender.

That adequate salaries be appropriated for probation officers in order to secure the entire time of able men and women.

That in every state we favor and urge the establishment of a State Probation Commission or Bureau to supervise probation work, both adult and juvenile, and to urge its extension in all parts of the respective states.

DR. KATHARINE BEMENT DAVIS then offered the following resolution and moved that it be referred to the Executive Board of the Institute:

"*Resolved,* That the Institute of Criminal Law and Criminology recommend the adoption in the several states of legislation prohibiting the imposition of fines in cases of conviction for common prostitution, soliciting, lotering and similar offenses and the substitution therefor of probation in cases where imprisnment in appropriate institutions does not seem desirable."

DR. DAVIS: There are two reasons why I should prefer to have it referred to the Executive Board. In the first place we can't have a full discussion here and I think there is some objection to it, and in the second place it might be desirable to frame the resolution differently in order that it may cover states where there is no probation system.

The thing I care about is having fines used at all. It is just as bad on the installment plan as in any other way. In my judgment it is licensed prostitution.

By unanimous vote the resolution was referred to the Executive Board.